IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.34 OF 2000

The State of Maharashtra ..Appellant

Versus

1. Vinayak Shivaji Bhegade
   Age 19, Occupation
   R/o Talegaon Dabhade.

2. Nitin Bharat Shilimkar
   Age 18 Occupation
   R/o Talegaon Dabhade
   (Reported dead)

3. Shekhar Raghavendra Malanna
   Age Occupation
   R/o Dehuroad, Gandhinagar

4. Sham Arun Nigadkar
   Age 19, Occ. Agri.
   R/o. Dolasnath Alli,
   Talegaon Dabhade, Tal Mawal,
   Dist. Pune.

5. Balu Pandharinath Takale
   Age 19, Occ. Agri.
   R/o. Takalevasti, Talegaon,
   Dabhade, Tal. Mawal,
   Dist. Pune.

6. Kishor Harischandra Jadhav
   Age 22, Occ.Labour
   R/o. Varangwadi, Tal. Mawal,
   Dist. Pune. ..Respondents
   (Org.Accused
   Nos. 1 to 6)

Mrs.V.R.Bhosale, APP for the State.

None for Respondent Nos.1, 3, 5 & 6.

Respondent No.2 is dead.

Mr.S.R.Borulkar for Respondent No.4.

Coram : R.M.Lodha &
R.S.Mohite,JJ

Date : 19.01.2005.

. **Oral Judgment :- (Per : R.S.Mohite,J)**

1. This is an appeal filed by the State impugning the Judgment and order passed by the 7th Additional Sessions Judge, Pune on 20.11.1999 in Sessions Case No.208/1997, by which the learned Sessions Judge has acquitted all the six accused before him for offences punishable under Sections 143, 147, 148 and 302 read with Section 149 of the Indian Penal Code as also under Section 395 of the Indian Penal Code.

2. The brief facts of the prosecution case are as under :-

(a) that the deceased Gorakh Kul was working in Eagle Flask company. He used to come to the Company at about 7.30 A.M. On 29.12.1996 (PW 11) Suresh Sarode who was also an employee of the same Company came to work at 6.30 A.M. and on his way to work he saw one Tempo trax of white colour standing in front of the gate of his company. He saw accused no.5 standing near the tempo trax and there were 5 to 6 other persons in the said vehicle. While he was proceeding ahead, he saw the deceased Gorakh Kul coming on the scooter. The tempo trax which was standing there came from the back side and gave a dash to scooter and as a result of this, Gorakh fell down. The persons who were on the tempo trax got

down and started giving blows to Gorakh Kul with swords, choppers and sickle. Accused No.1 was holding a sword in his hand, accused no.5 & 6 were holding a sickle, accused no.4 was holding a chopper. and rest of the persons were also holding sickle in their hands and with such weapons the accused gave blows on the body of Gorakh Kul. The assault lasted for about 2 to 3 minutes, after which the accused fled towards MSEB road. The deceased Gorakh died on the spot. The incident is also said to have been witnessed by (PW 12) Rajesh Jadhav who was a person who used to visit the premises of Eagle Flask company to purchase scrap material for sale in Bombay and Pune ;

(b) That apart from the evidence of the aforesaid two eye witnesses, the prosecution case further rested on certain recoveries made during the course of investigation. Accused no.1 Vinayak was arrested on 10.1.1997 and his clothes are shown to have been recovered on 13.1.1997. A sickle is also recovered at his behest. There is no blood found on his full pant. Blood group of 'B' found on his shirt. Sickle also does not have any blood on it. Blood group of this accused is however, also 'B';

(c) As far as accused no.3 Shekhar is concerned, he was arrested on 11.3.1997 and on 15.3.1997, a shirt, pant, and sickle were recovered at his instance.

Blood is found on the shirt of accused no.3 but no blood is detected on his pant and the sickle. Investigating officer however, has not collected blood of accused no.3 ;

(d) Accused No.5 Balu was arrested on 5.4.1997 and on 10.4.1997, a shirt, payjama, and sickle were recovered at his instance. The blood group on all these articles is 'B' group. On 14.4.1997 accused no.6 Kishor was arrested and his shirt, pant and a sickle were recovered at his instance on 21.4.1997. No blood has been found on the sickle but human blood has been found on the clothes ;

3. We have perused the Judgment and Order passed by the trial court as also the record of the case. We find that both the eye witnesses as well as recovery evidence has been dis-believed by the trial court for the reasons which are possible and also cogent. In so far as (PW 11) Suresh Sarode is concerned, though he claims to have seen the assault by accused no.1 with the sword, accused no.5 with the sickle and accused no.4 with the chopper, in his deposition he states that he identified accused no.1, 2, & 3 in an identification parade. There is no substantive evidence of identification led by the prosecution in the Court. Be that as it may, his version about having seen accused no.1 holding a sword is a proved omission which amounts to contradiction. Similarly,

his version about accused no.5 Balu carrying a sickle in his hand is also proved omission amounting to contradiction. In both these cases, he is not able to assign any reason for the omissions. This witness, in his evidence also claims to know all the accused persons. He states in his evidence that within 15 minutes after the incident, Dilip Kul (PW 7) who was the brother of the deceased arrived on the spot. He claims that he made a full disclosure to Dilip Kul. This version is not supported by the evidence of (PW 7) Dilip Kul. The evidence of Dilip Kul is that he only received information about the assault by accused no.5 Balu on the spot.

4. In so far as (PW 12) Rajesh Jadhav, his evidence is also being dis-carded by the trial court. This witness claims to know all the accused as they were from his village. He claims that accused no.1 was holding a sword, accused no.5 was holding a sickle, accused no.6 also holding a sickle and accused no.4 was holding a chopper. He claims that one un-known person who was accused no.3 was in the group. He claims to have seen all the persons having given blows to the Scooterist. In his cross-examination, however he states that he never raised a hue & cry nor tried to intervene. He did not disclose about the incident. He was present when the police drew a panchanama which took about 1/2 hours or 45 minutes but he made no disclosure to the police. He had no

talk with Dilip Kul. He merely left the spot after giving his scooter to his friend. He did not remember whether he apprised his friend about the incident or not. He thereafter returned to Bombay on 31 st December 1996 i.e. after about 2 days and on 1.1.1997, of his own accord he went to the police station. The statement of this witness is thus recorded 3 days after the incident. One other interesting aspect as regards this witness is that his presence at the spot of the incident, is not referred to by (PW 11) Suresh Saroad who claims to be the only person who had witnessed the incident till the arrival of Dilip Kul.

5. In so far as the recoveries are concerned, though the incident took place on 29.12.1996, recoveries are made after lapse of substantial time. The recovery at the behest of accused no.1 is on 13.1.1997. Blood group B is found on the clothes which does not carry the case of the prosecution as blood group of accused no.1 is also found ‘B’. As far as recovery on behest of accused no.3, no blood is found on his pant and sickle. No blood is found on the shirt. Blood of the deceased ‘B’ group is found on the shirt. The blood group of this accused is also ‘B’. This recovery is on 15.3.1997 i.e. almost 3 & 1/2 months after the incident.

6. In so far as accused no.5 is concerned, the

recovery after more than 4 months and though blood group of 'B' is found on the shirt, paypama and sickle, this cannot be the sole basis for conviction. The recovery of sickle, shirt and pant at the behest of accused no.6 does not carry the prosecution case further because though the blood is found to be the human blood, the blood group has not been determined.

7. Taking over all view of the matter, it cannot be said that the view taken by the learned Sessions Judge is so perverse that it would warrant interference with in an appeal against acquittal. In this view of the matter, the appeal fails and is hereby dismissed.

(R.M.LODHA,J)

(R.S.MOHITE,J)